HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.5353 of 2007

Dated:17-12-2007

Between:

Kalluri Srinivasa Rao
And others

..... Pet

AND

The District Collector,
Prakasham district.
And others.

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Counsel for the petitioners : Sri M.Sudheer kumar

Counsel for Respondents : Spl.G.P.for Land Acquisition.

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O R D E R:

At the interlocutory stage, the writ petition is proposed to be disposed of with the consent of the learned counsel for the petitioners and the learned Special Government Pleader representing the respondents.

This writ petition is filed for a writ of mandamus to quash notification dated 12.8.2006 issued under Section 4(1) of the Land Acquisition Act 1894 (for short "the Act") and declaration dated 21.2.2007 issued under Section 6 of the Act in so far as the lands relating to the petitioners are concerned.

By the impugned notification issued under Section 4(1) of the Act, the lands belonging to the petitioners are proposed to be acquired for a public purpose, namely, excavation of Left Main Canal of Kandula Obula Reddy project. A perusal of the notification shows that enquiry under Section 5A of the Act has been dispensed with by invoking urgency clause under Section 17(4) of the Act.

At the hearing, the learned counsel for the petitioners submitted, and the learned Special Government Pleader has conceded to his submission, that in certain identical writ petitions this Court set aside declaration issued under Section 6 of the Act and directed holding of enquiry under Section 5A of the Act.

In view of this admitted position, notification dated12.8.2006 to the extent it invoked the urgency clause under Section 17(4) of the Act is declared invalid and declaration dated 21.2.2007 issued under Section 6 of the Act is quashed. The respondents are directed to hold enquiry under Section 5A of the Act and afford the petitioners an opportunity of personal hearing before deciding to proceed further.

Sri M.Sudheer Kumar, learned counsel for the petitioners submitted that the Special Collector (Land Acquisition), who issued notification under Section 4(1) of the Act is not delegated with the power to issue the impugned notification. The learned counsel submitted that Section 3A of the Act requires publication of notification of delegation, if

any made, to discharge the powers of the Government in the official gazette. According to him no such gazette publication has been made.

Learned Special Government Pleader had however placed G.O.Ms.No.1 dated 1.1.1998 vide which the Government delegated the powers of the Government to the Collector to issue notification under Section 4(1) of the Act and G.O.Ms.No.89 dated 2.6.1989 whereby the Special Collectors are included within the expression 'Collectors'. The learned Special Government Pleader contended that since the petitioners have not raised the specific issue whether this notification is published in the gazette or not he is not able to readily produce the gazette publication.

In view of the fact that the declaration under Section 6 of the Act is set aside and the respondents are directed to hold enquiry under Section 5A of the Act, and in the absence of specific pleadings raised by the petitioners in this regard, I am not inclined to go into and adjudicate the above mentioned issue. I however leave it open to the petitioners to raise this contention if need be in future.

Subject to the above observations, the writ petition is allowed in part.

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C.V.NAGARJUNA REDDY,J

Date:17.12.2007

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